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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0316**

State of Minnesota,
Respondent,

vs.

Said Sharif Maye,
Appellant.

**Filed April 3, 2023
Affirmed
Frisch, Judge**

Hennepin County District Court
File No. 27-CR-20-18707

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Eder B. Castillo, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Bjorkman, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant argues that his conviction for second-degree murder must be reversed because the district court abused its discretion by permitting the admission of irrelevant

threat evidence and that this error was not harmless. Because the threat evidence was relevant and introduction of the evidence was harmless, we affirm.

FACTS

Respondent State of Minnesota charged appellant Said Sharif Maye with second-degree intentional murder and second-degree unintentional murder. Maye challenges the admission of certain evidence at the jury trial. The state's theory of the case as presented at trial was as follows.

Incident

On the evening of August 23, 2020, the victim met a longtime friend, the eyewitness. The victim drove the eyewitness to a bar where they sat at a table on the patio. Maye joined the victim and the eyewitness at the table. The eyewitness was acquainted with Maye but did not know his last name. Tension arose between the parties because of language barriers and derogatory comments made by Maye. In the early morning hours of August 24, the eyewitness and the victim decided to leave. The eyewitness exited the bar through the front, but the victim and Maye left through the alley that led to the patio. The victim walked to their car, which was parked facing uphill. Maye continued on foot up the hill.

The eyewitness met the victim at the victim's car. They did not immediately enter the vehicle because the eyewitness was smoking a cigarette and did not want to do so in the victim's car. While the eyewitness was standing on the sidewalk on the passenger's side of the car and the victim was standing in the street on the driver's side of the car, Maye drove down the hill on the opposite side of the street. Maye then turned toward the victim and accelerated, colliding into the victim's car and pinning the victim between the two

vehicles for about five to seven seconds. The victim's car jumped the sidewalk and knocked the eyewitness over. Maye then placed his car in reverse and drove away. The victim rolled down the hill.

On August 25, the victim died. The medical examiner certified the cause of death as "complications of blunt force craniocerebral injuries due to a pedestrian struck by a motor vehicle."

At the scene, law enforcement obtained the eyewitness's name and address from their driver's license. The eyewitness identified Maye as the driver but was unable to provide law enforcement with his last name or description of the vehicle. The eyewitness left the scene before speaking with a traffic sergeant about the collision. Despite the eyewitness's efforts to contact law enforcement following the incident, the eyewitness did not meet with investigators until days later, on August 27.

At trial, Maye testified on his own behalf. Maye testified that he was sitting by himself when the eyewitness and the victim asked to join him. Maye testified that the victim was smoking a marijuana cigarette, and the victim and the eyewitness were selling marijuana. Maye was a truck driver and he was concerned that he would fail a drug test if he inhaled the smoke second-hand, resulting in the revocation of his license. Maye asked the victim to stop smoking and told the victim that he would tell the bartender what the victim was doing.

When Maye left, the victim followed him into the alley and threatened him. Maye ran to his car and began to drive away, but the victim charged toward him. Maye saw something metallic in the victim's hand and assumed it was a gun. Maye swerved the car

into the left lane to avoid the victim and ducked down because he was afraid of being shot. The victim threw himself onto Maye's car and Maye lost control of his vehicle. Maye's car collided with a car, but Maye only saw damage to the car and did not know where the victim was. Maye saw the eyewitness approaching him, and Maye reversed his car and drove away. Maye did not call 911 because he did not think that he had hit a person.

Threat Evidence

Maye moved in limine to preclude the state from introducing testimony from the eyewitness that, after Maye was arrested, the eyewitness received at least two threatening phone calls from unknown numbers telling the eyewitness not to testify (threat evidence). The district court heard the motion on the first day of trial. The state argued that the evidence was relevant to the eyewitness's credibility, assuming that credibility of the eyewitness would be attacked at trial, and to explain expressions of fear by the eyewitness during testimony. The state also asserted that "there's no allegation that it's connected to Mr. Maye. . . . [N]obody is saying that it came from him or was orchestrated or coordinated by him." Maye responded that, without evidence that he was associated with the calls, the evidence was lacking in probative value. Maye argued that even if the threat evidence related to the eyewitness's credibility, the risk of prejudice was "extraordinary" because the jury would infer that Maye was responsible in some capacity for the calls. Maye also argued that he could not defend against such an inference in the absence of evidence showing the existence or source of the calls.

The district court denied the motion in limine but directed the state to make clear to the jury "whether that's on direct examination or by stipulation" that there is no allegation

that Maye was involved in any way with the calls. The state agreed to comply with the district court's instruction. Maye argued that the condition was not a satisfactory solution to remedy the potential for unfair prejudice because it did not eliminate the inference that he was involved in the calls. Maye pointed to the distinction between testimony from the eyewitness stating they had no reason to believe that Maye was behind the calls, and testimony from someone who could definitively testify that neither Maye nor someone associated with him made the calls. The district court declined to revisit its ruling, stating that an implication that the calls originated with Maye would contravene its order and that it expected the state to advise the eyewitness about the evidentiary limitations imposed by the district court.

The state elicited the following testimony from the eyewitness at the end of the state's direct examination:

Q: Okay. So my last question for you, [eyewitness], is this happened in August—on August 24th, 2020. It's now November 10th, 2021. While this case has been pending after it got charged, did you receive threatening phone calls regarding your testimony today, yes or no?

A: Yes.

Q: And how many calls did you receive?

A: Probably more than six.

Q: And you have no reason at all to believe that those calls were from Mr. Maye or done on his behalf, right? There's no reason to think that, right? I mean, you don't personally know that Mr. Maye was on the other end making the threat?

A: No.

Q: But somebody called you and essentially told you not to testify; is that true?

A: Yes.

Q: And you're here today despite those phone calls, right?

A: Yes.

The jury found Maye guilty of second-degree unintentional murder and not guilty of second-degree intentional murder.

Maye appeals.

DECISION

Maye argues that the district court abused its discretion by allowing the state to introduce the threat evidence because the threat evidence had no probative value, was unfairly prejudicial, and the error in admitting the threat evidence was not harmless. We address each argument in turn.

Relevant evidence is generally admissible, but even relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. *State v. McArthur*, 730 N.W.2d 44, 51 (Minn. 2007) (citing Minn. R. Evid. 402, 403). We review a district court's evidentiary rulings for an abuse of discretion. *Id.*

Relevance

Maye argues that the threat evidence had no probative value and was therefore irrelevant because there was no need to explain inconsistencies in the eyewitness's statement, and the eyewitness did not claim that they were afraid to testify.

"Evidence of witnesses' fears of testifying and of purported threats against witnesses both tend to be relevant to general witness credibility or to explain a witness's reluctance to testify or inconsistencies in a witness's story." *Id.* at 52. "[T]he probative value of evidence of a witness's fears is greatest when offered on redirect examination, in

response to attacks on witness credibility.” *Id.* at 51. But anticipating an attack on credibility and introducing such evidence on direct examination may be appropriate in some cases. *Id.*

The threat evidence had probative value. The threat evidence is relevant to the credibility of the eyewitness. During opening statement, Maye indicated that the credibility of the eyewitness was at issue. And during trial, at least one inconsistency in the eyewitness’s testimony arose. The state asserted in its opening argument that the eyewitness was not drinking alcohol on the night of the incident because they had to work the next day, but the eyewitness testified that they had been drinking alcohol and did not have to work the next day. We acknowledge that the admission of the threat evidence occurred during direct examination, which may limit its probative value. *See id.* But the evidence retained some probative value notwithstanding the timing of its admission.

Maye argues that the threat evidence was unfairly prejudicial because of the risk that the jury would assume Maye was somehow responsible for the threatening calls.¹ Evidence of third-party threats “may be extremely prejudicial in that the jury may wrongly

¹ Maye also asserts that without evidence connecting a defendant to threats, evidence of those threats is so highly prejudicial it is inadmissible, citing *Dudley v. Duckworth*, 854 F.2d 967 (7th Cir. 1988), in support. The *Dudley* court recognized that Indiana courts have held that the presentation of evidence of threats without evidence connecting the defendant to the threats can amount to an “evidential harpoon.” 854 F.2d at 970 (quotation omitted). We are unaware of any authority in Minnesota that, without evidence connecting a defendant to the threats, such evidence of threats is too prejudicial as a matter of law to be admissible. *See State v. Vance*, 714 N.W.2d 428, 440-42 (Minn. 2006) (concluding that the district court did not err by admitting evidence of threats against four witnesses and evidence that one witness quit their job out of fear as a result of testifying despite the defendant’s argument that the evidence should have been excluded because there was no evidence connecting him to the threats).

assume that the defendant made the threats or that associates of the defendant did so at the defendant's behest." *State v. Clifton*, 701 N.W.2d 793, 797 (Minn. 2005) (quotation omitted). "The district court should be concerned that the evidence of fear is not used to create an inference that a defendant is a bad person who is likely to commit a violent crime." *McArthur*, 730 N.W.2d at 51. And the evidence must not be used to allow an inference about the defendant's knowledge of their guilt when the threats cannot be traced directly to the defendant. *Id.* at 52. In considering the risk of unfair prejudice associated with the admission of threat evidence, we look to (1) efforts to limit unfair prejudice by the district court, and (2) the context and manner in which the evidence was introduced and used. *See id.* at 52-53 (analyzing the rulings by the district court, how the state elicited the evidence, and the use of the evidence in the state's presentation of its case).

First, the district court adopted appropriate safeguards to prevent an improper inference from the threat evidence. In circumstances where such evidence may be relevant, there is a "need for district courts to provide safeguards," such as cautionary instructions and limiting such testimony to redirect examination, "to prevent the evidence from being misused." *Id.* at 51-52. Because each case is distinct, "we leave the case-by-case determinations to the discretion of the district courts, trusting them to make sound decisions about the admissibility of evidence of witnesses' fear and to fashion appropriate safeguards in the event such evidence is admitted." *Id.* at 52. For example, there may be reasons to allow witnesses to testify about threats and fear on direct examination. *Id.* And although a cautionary instruction is recommended, it is not necessarily erroneous for a district court to forgo a cautionary instruction when no such instruction is requested. *Id.* at 51, 53.

The district court chose a safeguard appropriate to the case. It required the state to elicit testimony that the eyewitness had no reason to believe that Maye was responsible for the threatening calls and prohibited the state from implying that Maye was responsible for those calls. This safeguard addressed the concern that the jury would infer that Maye is “a bad person who is likely to commit a violent crime.” *Id.* at 51. Although the district court did not use a cautionary instruction, it appears from the record that Maye did not request a cautionary instruction or object to the final instructions, and therefore the absence of a cautionary instruction is not error. *Id.* at 53. And allowing the threat evidence to be introduced on direct examination was appropriate given the likelihood that the eyewitness’s credibility would be at issue. *Id.* at 51. We acknowledge that the eyewitness’s testimony left open the possibility that Maye was in fact responsible for the calls. *See State v. Vang*, 774 N.W.2d 566, 580 (Minn. 2009) (stating that a witness who testified about threats against him “*made clear* that appellant had not threatened him” (emphasis added)). But we are mindful that selecting appropriate safeguards is a difficult task left to the discretion of the district court. *McArthur*, 730 N.W.2d at 52.

Second, the threat evidence was a minor part of the trial, which in context minimized unfair prejudice to Maye. Evidence regarding threats made to the witness is “most prejudicial when it is an important focus of the state’s case.” *Id.* at 51. But it is less likely that the admission of such evidence amounts to an abuse of discretion when the questions posed to the witness are designed to preempt credibility attacks and explain inconsistencies or delays in reporting to the police, and the focus of the state’s case is not on such evidence (even when mentioned in argument). *See id.* at 52-53.

The state limited its questions to the eyewitness to establish only that the eyewitness had received threatening calls—the state did not probe for an implication connecting Maye to the calls. Likewise, the eyewitness’s answers did not affirmatively suggest that Maye could have been responsible for the calls. While the eyewitness’s credibility was implicated throughout the trial, including during closing arguments, the state’s case did not focus on the threat evidence to bolster the eyewitness’s credibility. The state did not mention the threat evidence in its opening statement or its closing argument, and other witnesses did not testify about the threat evidence.

We therefore see no abuse of discretion by the district court because the threat evidence had probative value, was introduced with an appropriate safeguard in place, and the state’s use of the evidence was minimal.

Harmless Error

Maye argues that the threat evidence had a substantial impact on the verdict because the state’s case was weak and his own testimony, which Maye asserts was more consistent with the forensic evidence, supported an acquittal. Even if evidence is erroneously admitted, we generally will not reverse “unless there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *State v. Jaros*, 932 N.W.2d 466, 472 (Minn. 2019) (quotation omitted). The defendant bears the burden of establishing a “reasonable possibility that the jury would have reached a different verdict had the wrongfully admitted testimony not come in.” *Id.*

As discussed above, the threat evidence was limited to the testimony the state elicited at the end of its direct examination of the eyewitness. In comparison, the state’s

evidence included, in part, the eyewitness's testimony, photos of the scene, photos of Maye's car days after the incident, and the medical examiner's report and accompanying testimony. We acknowledge Maye's argument that the lack of injuries to the victim's lower body could be inconsistent with the description of the victim being pinned against the car. But Maye does not challenge the sufficiency of the evidence to support his conviction on appeal. Based on the limited use of the threat evidence in the context of the entire trial, we cannot say that there was a reasonable possibility that the jury would have reached a different verdict had the district court excluded the threat evidence.

Affirmed.